In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 647

GOON MEE HEUNG, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, a 41-year-old citizen of the Republic of China, entered the United States via Hawaii about October 15, 1961. She represented herself to be a citizen of the United States and exhibited a United States passport fraudulently supporting this claim. After a hearing petitioner was, on April 29, 1964, ordered deported for having entered the United States without valid entry documents, pursuant to Sections 212(a)(20) and 241(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(20) and 1251(a)(1)). No appeal was taken. Based on these proceedings, the Service issued an order dated April 18, 1966, for petitioner to report on May 3, 1966, for deportation

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to Hong Kong—the residence of her husband and children.

On April 29, 1966, petitioner filed a motion to reopen the deportation proceedings to permit application for adjustment of status to that of an alien admitted for permanent residence under Section 245 of the Act (8 U.S.C. 1255).[1] The special inquiry officer denied the motion on the ground that petitioner was ineligible for adjustment of status under Section 245 since she had not been inspected as an alien upon her entry into the United States. The Board of Immigration Appeals dismissed the ensuing appeal (Pet. App. B), and the court of appeals, one judge dissenting, affirmed (Pet. App. A).

DISCUSSION

Petitioner contends that her entry into the United States, even though under a false claim of American citizenship and with knowing use of a fraudulent passport, nevertheless constituted an "inspection" within the meaning of Section 245 of the Act (Pet. 4–6). It has long been settled, however, that entry into this country as a citizen using a false passport, thereby evading completely any examination as an alien, is no inspec-

[1] Section 245 of the Act provides, in pertinent part:

Section 245. (a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if [three specified conditions are met] * * *.

tion at all.[2] See *Sherman* v. *Immigration and Naturalization Service*, 350 F. 2d 894 (C.A. 2), reversed on other grounds, 385 U.S. 276; *Ben Huie* v. *Immigration and Naturalization Service*, 349 F. 2d 1014, 1017 (C.A. 9); *United States ex rel. Volpe* v. *Smith*, 62 F. 2d 808 (C.A. 7), affirmed, 289 U.S. 422; *Saadi* v. *Carr*, 26 F. 2d 458 (C.A. 9), certiorari denied, 278 U.S. 616; *Matter of S—*, 9 I & N Dec. 599; *Matter of K—B—N—*, 9 I & N Dec. 50; see generally Gordon and Rosenfield, *Immigration Law and Procedure*, §§ 3.16, 4.8 (1966). The force of these decisions is not lessened by the fact that they arose in proceedings for deportation under Section 241(a)(2) (8 U.S.C. 1251(a)(2)) on the ground that entry was without inspection. Petitioner's reliance on *Ex Parte Gouthro*, 296 Fed. 506 (E.D. Mich.), affirmed *sub nom. United States* v. *Southro*, 8 F. 2d 1023 (C.A. 6)—involving alleged misrepresentations concerning the purpose of entry in the course of an inspection as an alien—is unwarranted. As noted by the court of appeals (Pet. App. A 10–11), whatever may be said of other misrepresentations, an entry under a fraudulent claim of citizenship, if successful, circumvents without

[2] A contrary reading of the statute would put a wholly unwarranted premium on an alien's successfully entering the country through the use of fraudulent citizenship papers (see Pet. App. 10). And the fact that misrepresentation incident to entry is now a separate ground for deportation (8 U.S.C. 1182(a)(19)) hardly means that the inspection requirement should be rendered nugatory and effectively read out of the Act, at least insofar as the availability of discretionary relief under Section 245 is concerned.

further inquiry all of the alien registration forms and other control procedures contemplated by Congress to apply to all aliens in obtaining a visa abroad and in gaining entry to this country.[3] *Gouthro* is thus plainly distinguishable and presents no conflict with the instant decision.

Moreover, Congress has made it clear that Section 245 of the Act—the adjustment of status provision—was intended to benefit "only those aliens who enter the United States in good faith and without any intention of circumventing quota restrictions * * * or any other law relating to immigration * * *." S. Rep. No. 1651, 86th Cong., 2d Sess., p. 27, 1960 U.S. Code Cong. and Admin. News 3124, 3147; see also S. Rep. No. 2133, 85th Cong., 2d Sess., 1958 U.S. Code Cong. and Admin. News 3698–3701. Accordingly, as the court of appeals alternatively held (Pet. App. A 11–13), it would appear that Congress intended the inspection at entry required for Section 245 relief to be one free of any material misrepresentation. Indeed, as the court below pointed out, "the legislative history shows

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[3] Noting the limited scope of its holding, the court below stated (Pet. App. 10–11): "[W]e need not, and do not, decide that whenever an inspection is not pursued because of a misrepresentation there has been no inspection. What we do hold is that there must at least be a submission or presentation for the inspection required by the statute, and that for the substantive reasons heretofore given Section 1251 * * * required an inspection *as an alien*. This inspection was never had in any degree. * * * A man who successfully claims to be a citizen has not been inspected as an alien at all. We hold, accordingly, that where there was a false claim of citizenship, made and accepted, there has been no inspection under [Section 241]."

that the term 'inspection'" as used in Section 245 was intended to be "even more strict" in meaning than in Section 241 (Pet. App. 11). Under either view, petitioner's method of entry under a fraudulent claim of citizenship bars the relief sought.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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